



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

(REOPENED FOR RECTIFICATION)

1. COMPLAINT NO. 741 OF 2019

Ram Bhagwan Singhal

....COMPLAINANT

VERSUS

M S Suncity Buildcon Pvt Ltd

....RESPONDENT

2. COMPLAINT NO. 742 OF 2019

Ankur Goel

....COMPLAINANT

VERSUS

M/s Suncity Buildcon Pvt Ltd

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Date of Hearing: 31.05.2023

Hearing: 2nd

Present:

Mr. Drupad Sangwan, Id. counsel for the complainants in both complaints through video conferencing.
Mr. Kamaljeet Dahiya, Id. Counsel for the respondent in both complaints.

Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Captioned complaints were disposed of by the Authority vide order dated 11.10.2022, granting relief of refund of the paid amount along with interest to the complainants in both the complaints. Relevant part of order dated 11.10.2022 is reproduced below for reference:-

“7. In light of the facts and circumstances, Authority observes that in present complaint, the complainant had booked an apartment in the project of the respondent in the year 2013 for which he has paid an amount of 3 7,55,500/- till July 2013 against total sale consideration of & 30,69,450/-. Complainant had alleged that he had stopped making further payments since respondent had not even begun construction at the site of the project. Respondent on the other hand submitted that the project in question already stands complete and has received occupation certificate on 29.08.2015. In view of said occupation certificate, the contentions raised by complainant that respondent had failed to develop the project cannot be accepted. It is

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the complainant who is at fault on account of failure in making payments as per the payment schedule. Therefore, Authority observes that respondent is entitled to forfeit the earnest money. Respondent is directed to refund the amount of & 7,55,000/- to the complainant alongwith admissible interest till date of order in terms of Rule 15 of HREERA Rules 2017 after deducting earnest money. Amount shall be refunded as per provisions of Rule 16 of HREERA Rules 2017.

8. As per clause 16 of the terms and conditions of allotment letter earnest money was to be the payment made to the developer either with the application for provisional allotment or thereafter to the extent of 15% of the basic sale of said unit. Authority observes that 15% earnest money is too high. Authority would therefore consider it unconscionable and unreasonable. RERA provides for Earnest money of 10% of basic cost price of the unit. This is also a standard market practice. Therefore, respondent

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can be allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainant along with admissible interest.

9. Authority accordingly orders refund of the amount paid by the complainants alongwith interest as shown in table below:

<i>S.No</i>	<i>Complaint No.</i>	<i>Principal amount (In Rs.)</i>	<i>Interest @9.50% (In Rs) till 11.10.2022</i>	<i>Total amount to be refunded by the respondent (In Rs)</i>
<i>1.</i>	<i>741 of 2019</i>	<i>7,55,000/-</i>	<i>7,15,642/-</i>	<i>14,70,642/-</i>
<i>2.</i>	<i>742 of 2019</i>	<i>7,05,000/-</i>	<i>6,69,218/-</i>	<i>13,74,218/-</i>

10. Cases are disposed of. Order be uploaded on the website of the Authority and files be consigned to record room.

2. Respondent has filed application for modification/rectification of the order dated 11.10.2022 in captioned complaints on ground that in the table

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drawn in para 9 of the impugned order while calculating the quantum of interest the full amount received from the allottee has been made the basis to calculate the amount to be refunded to the allottees whereas vide said order para (8), respondent is also allowed to deduct 10% of the basic sale price as earnest money.

3. Today, Mr. Kamal Dahiya, learned counsel for the respondent submitted that in captioned complaints, Authority vide order dated 11.10.2022 had granted relief of refund of paid amount along with interest to complainants in both complaints. Authority had further observed that respondent is entitled to deduct 10% of basic sale price as earnest money and thereafter return remaining amount to the complainants. However, at the time of calculation of interest the total amount of ₹ 7,55,000/- in compliant no. 741 of 2019 and ₹ 7,05,000/- in complaint no. 742 of 2019 was taken into consideration without deduction of the earnest money to be forfeited by the respondent, thus make a total amount ₹ 14,70,642/- payable to complainant in Complaint no. 741 of 2019 and ₹ 13,74,218/- payable to complainant in Complaint no. 742 of 2019 resulting in filing of the application for correction/modification of the order dated 11.10.2022 on account of error occurred at the time of calculating interest admissible to complainants. Therefore, he prayed that the order dated 11.10.2022 be rectified to that extent.

4. Mr. Drupad Sangwan, learned counsel for the complainant objected to the averments of the respondent, submitting, that complainants are entitled to

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receive interest on the entire amount of ₹ 7,55,000/- in compliant no. 741 of 2019 and ₹ 7,05,000/- in complaint no. 742 of 2019 as the same has been retained by the respondent till the date of order.

5. Upon perusal of the order dated 11.10.2022 and application filed by respondent , it is observed that in the order dated 11.10.2022 the amount of interest has been calculated on the total paid amount of ₹ 7,55,000/- in Complaint no. 741 of 2019 and ₹7,05,00/- in Complaint no. 742 of 2019 which works out to ₹ 7,15,642/- and ₹6,69,218/- respectively whereas the total amount payable to complainant works out ₹ 14,70,642/- in Complaint no. 741 of 2019 and ₹ 13,74,218/- in Complaint no. 742 of 2019 accordingly. At para 8 of the impugned order it has been categorically mentioned that respondent is allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainants meaning thereby , respondent is allowed to deduct 10 % of basic sale price as earnest money from the total amount of ₹ 14,70,642/- payable to complainant in Complaint no. 741 of 2019 and ₹ 13,74,218/- payable to complainant in Complaint no. 742 of 2019 and thereafter refund the remaining amount to each complainant respectively. The interest admissible to complainant has been calculated on the total paid amount as the same has been retained and utilized by the respondent till date of order. The calculations in order dated 11.10.2022 have been arrived at based on the aforementioned principle and are found to be correct. Since there being no error

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apparent on record, no requirement had arisen to rectify/modify the order dated 11.10.2022 passed in captioned complaints.

6. So, Application filed by the respondent for review of the order dated 11.10.2022 is dismissed.



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NADIM AKHTAR
[MEMBER]



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DR. GEETA RATHEE SINGH
[MEMBER]